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ABSTRACT

Based on the importance for newly licensed attorneys to conduct legal research, this study assessed the relationship between bar exam scores and scores on a test designed to measure certain important legal research skills. It also investigated whether differences in performance level among racial groups on the Research Test paralleled differences among these groups on the bar exam and whether Research Test scores were related to an applicant's legal training and experience. The 1785 California applicants for the July 1980 bar exam were assigned randomly to one of three research problems. The three groups had essentially identical average Multistate Bar Examination (MBE) and essay scores. Each two part problem consisting of 195 minutes of test time focused on the ability to integrate information in the context of a realistic case situation. The correlation between the total score on the Research Test and the total score on the regular bar exam (MBE and essay) were almost as strong as the correlation between the MBE and essay portions of the regular exam. Racial/ethnic groups score differences were almost identical on the Research Test and MBE. Experience practicing law (actual or simulated) resulted in higher scores on the Research Test than those applicants with no such experience. (PN)

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MEASURING LEGAL RESEARCH SKILLS ON A BAR EXAMINATION

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May 1983

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BACKGROUND

Most bar examinations consist of a nationally administered, 200 item, multiple choice test, called the Multistate Bar Examination (MBE), and a state developed essay test containing about 6 to 15 questions. Both the MBE and essay assess an applicant to the bar's knowledge of the law and the ability to analyze legal problems. The essay further measures the ability to identify legal issues and express ideas in a "lawyer like" fashion.

State bar examinations have been criticized for measuring only a few of the important skills and abilities that are needed for the practice of law. For instance, a typical essay question provides several facts that are material to a case and then asks the applicant to determine how the case should be resolved relative to the applicant's knowledge of general legal principles. The exam does not assess interviewing, negotiating, or oral advocacy skills; the ability to draft or evaluate legal documents; or the ability to conduct legal research. This last skill is particularly important for newly licensed attorneys because they are often required to analyze legal documents, interview notes, transcripts, state and federal laws, and legal precedents in order to provide an objective assessment of the strengths and weaknesses of a client's case.

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State bar examinations also have been criticized for their disproportionate negative impact on minority groups. In California, for example, the percentage of Anglos that pass is twice as great as the percentage of Blacks that pass. Although differences in passing rates among groups parallels their relative performance levels in law school, it has been argued these differences would be substantially reduced if the exam measured practical (as distinct from academic) legal skills.

PURPOSE

The foregoing considerations led to an investigation of whether MBE and essay scores were good predictors of how well applicants could perform some of the day-to-day tasks that are required of practicing attorneys. One part of this study involved assessing the relationship between bar exam scores and scores on a test that was designed to measure certain important legal research skills. The study also investigated whether differences in performance level among racial groups on the Research Test paralleled differences among these groups on the bar exam and whether Research Test scores were related to an applicant's legal training and experience.

SUBJECTS

About 20 percent of all bar examinees in the country take the exam in California. About 7500 persons applied to take the July 1980 version of it. These applicants were advised: the exam would contain several experimental sections in addition to the regular essay and MBE, they would be assigned randomly to one of the experimental sections in advance of the exam, earning a high score in their assigned section could increase their chances of passing the entire exam, and earning a low score on the experimental section would not decrease their chances of passing.

A stratified random sampling procedure was used to assign subjects to sections. The sampling variables included law school (as a proxy for general academic ability), repeater status (i.e., whether they had failed the exam on a previous attempt), and racial/ethnic group (Anglo, Asian, Black, and Hispanic).

A total of 1785 applicants participated in the study presented in this paper (over 98 percent of those assigned to it). These applicants had essentially the same average MBE and essay scores as the population of all July 1980 California applicants.

PROCEDURES

The 1785 applicants were assigned randomly to one of three research problems, 1, 2, or 3. The three groups had essentially identical average MBE and essay scores.

Applicants were given 195 minutes to complete the problem to which they were assigned. Each problem had two parts, A and B. Part A consisted of a set of legal propositions and a mini-library of cases. Applicants were instructed to indicate the degree to which each case tended to support versus contradict each proposition. In part B, they were instructed to use the mini-library, interview notes, police reports, and other documents in order to prepare a written statement summarizing the strengths and weaknesses of their client's case. Thus, the test focused on the ability to integrate information in the context of a realistic case situation.

Part A was the same on Problems 1 and 3. Part B on Problem 1 required applicants to answer five separate questions about their client's case whereas on Problem 3, Part B required them to prepare on long memo to a senior partner. The case materials and questions used in Problem 2 were different than those used in Problems 1 or 3.

There were two readers per problem for Part B. After a calibration session, each reader graded about 50 percent of the answers to the problem he/she was assigned. Both readers also independently graded a common set of 20 answers that was embedded throughout the batch of answers they were assigned to grade.

RESULTS

Coefficient alphas on Part A ranged from .87 to .89 (for 42 case-proposition pairs). Coefficient alpha on Part B on Problem 1 was .62. Interreader correlations were .66, .75, and .65 for Part B on problems 1, 2, and 3, respectively. This degree of agreement between readers was about as high as it was on a typical bar exam essay question. The reliability of the total score on the Research Test, .78, was estimated using a procedure described by Gullicksen. This is about as high as the reliability of California's full 9 question (9 hour) essay test.

The correlation between Parts A and B was .35 on Problems 1 and 3, and .33 on Problem 2. Part A had an average correlation of .43 and .35 with the MBE and essay, respectively. The corresponding correlations for Part B were .43 and .48. The correlation between the total score on the Research Test (Parts A + B) and the total score on the regular bar exam (MBE + essay) were .62 and .58 for Problems 1+3 and 2, respectively. These coefficients rose to .74 and .69 after they were corrected for attenuation. These relationships were almost as strong as the correlation between the MBE and essay portions of the regular exam ($r = .68$ and .81, before and after correcting for attenuation, respectively).

The difference in average score among racial/ethnic groups on the Research Test were almost identical to the differences among these groups on the regular bar exam. However, applicants who had had some prior experience practicing law (in actual or simulated cases) scored higher on the Research Test than those who had not had such experience (even after controlling for difference in average MBE and essay scores among groups). And, scores on a two day test of practical legal skills (that was taken two weeks after the regular bar exam by a subset of those participating in this study) were more highly correlated with Research Test scores than they were with MBE or essay scores.

Applicants reported on a post examination questionnaire that the Research Test was a far better and more realistic measure of their ability to practice law than was either the MBE or essay portions of the regular bar examination.

CONCLUSIONS

Even after controlling for reliability, there was still a large percentage variance in Research Test scores that was not accounted for by the variance in regular bar exam scores. In fact, the correlation between Research Test scores and total scores on the regular exam was only about as strong as the correlation between MBE and essay scores. These findings along with the pattern of other correlations indicates the Research Test is measuring a somewhat different set of skills than those assessed by the traditional bar exam. It also is apparent that these skills are more closely associated with those required for legal practice than the more academically oriented abilities assessed by the MBE and essay.

The foregoing findings indicate that the inclusion of a Research Test on the bar exam could make a small but important difference in who passes. And, while the use of a Research Test would not narrow the gaps in average performance level among racial groups, neither would it increase the differences among these groups. The very strong similarity in the pattern of correlations with the Research Test across forms suggests that additional forms can be developed in accordance with the needs of a licensing program.

As a result of this study, California (with the assistance of the National Conference of Bar Examiners) has changed its bar examination. One third of the exam now contains two Research Tests of the type described in this paper. It also is anticipated that several other states will begin using a version of the Research Test in 1984.

The views expressed in this paper do not necessarily represent those of The Rand Corporation, the Committee of Bar Examiners of the State Bar of California, or the National Conference of Bar Examiners.